

### REMARKS

Claims 1-4, 8-22, and 25 remain in the referenced application.

Claims 1-4, 8-15, and 17 stand rejected under 35 U.S.C. §103(a) by *Quail On Small Woodlands*, Woodland Fish and Wildlife Project Publication, July 1996 (hereinafter referred to as Woodland Fish and Wildlife) in view of Moran (U.S. Patent No 2,355,008) further in view of Yoon (U.S. Patent No. 4,074,682). Applicant respectfully traverses the above-recited rejection on the basis Woodland Fish and Wildlife provides disclosure related only to woodland quail located in the Northwest whereas Applicant's invention is directed towards Southwest dwelling quail. As such, the habits of Applicant's quail are significantly different from the habits of the quail addressed by Woodland Fish and Wildlife. Consequently, Woodland Fish and Wildlife does not disclose Applicant's protective structure. Moreover, modification of the artificial quail roost disclosed by Woodland Fish and Wildlife as suggested by the Examiner in fact destroys the artificial quail roost for its intended purpose due to the behavioral differences between Applicant's quail and the Woodland Fish and Wildlife quail.

A major difference between Applicant's quail, which dwell in the Southwest, and woodland quail is that Applicant's quail roost on the ground whereas woodland quail roost off the ground. Applicant accordingly has designed his protective structure to accommodate ground roosting quail. Particularly, as shown in the enclosed photograph of Applicant's protective structure (Exhibit A), Applicant includes a roof assembly that provides an enclosure under which Applicant's quail may roost. Applicant's quail thus walk underneath the roof assembly for roosting on the ground. Applicant has amended claim 1 to recite that the roof assembly includes an impervious sheet that shields the fowl from the elements in order to emphasize that the fowl roost on the ground. Applicant further includes a protective barrier around the roof assembly to

prevent predators from reaching any of Applicant's quail residing underneath the roof assembly.

In contrast, Woodland Fish and Wildlife provide an artificial quail roost for accommodating quail that roost above the ground. Particularly, as described on page 3 under the heading "Roosts and Cover" and as shown in the picture at the top of the page, Woodland Fish and Wildlife disclose an open frame structure elevated six feet above the ground with brush piled against the frame structure to provide elevated night roosting. Woodland quail thus fly over the artificial quail roost and enter the artificial quail roost through the open top, thereby roosting within the open frame structure.

Based on the foregoing, Applicant respectfully submits that, contrary to the assertion made by the Examiner, the artificial quail roost disclosed in Woodland Fish and Wildlife does not include a roof assembly as recited in amended claim 1. The picture on page 3 of Woodland Fish and Wildlife clearly shows an open frame structure having only a bottom, which is not solid, and certainly in no way protects woodland quail from the elements. Moreover, the artificial quail roost disclosed in Woodland Fish and Wildlife cannot include a roof because the woodland quail enter the artificial quail roost from the top and actually sit within the artificial quail roost on the bottom of the open frame structure. Applicant therefore respectfully submits the Examiner's assertion that the artificial quail roost disclosed in Woodland Fish and Wildlife includes a roof assembly is incorrect because the artificial quail roost has no structure under which the woodland quail roost due to the fact the woodland quail enter the artificial quail roost from the top. Applicant therefore respectfully submits claim 1 as amended and claims 2-4, 8-15, and 17 are patentable over Woodland Fish and Wildlife in view of Moran and further in view of Yoon.

Applicant respectfully submits the Examiner's rejection fails at this point because Woodland Fish and Wildlife fails to disclose Applicant's roof assembly recited in amended claim 1 and claims 2-4, 8-15, and 17. Nevertheless, Applicant further respectfully submits modification of Woodland Fish and Wildlife in view of Moran and Yoon as suggested by the Examiner is improper. The Examiner asserts it would be obvious to enclose the artificial quail roost disclosed in Woodland Fish and Wildlife with the structures disclosed in Moran and Yoon. Applicant respectfully disagrees. The artificial quail roost disclosed in Woodland Fish and Wildlife requires an open top to provide woodland quail with an entrance thereto. Consequently, enclosing the artificial quail roost disclosed in Woodland Fish and Wildlife with the structures disclosed in Moran and Yoon would block the top of the artificial quail roost and prevent woodland quail from landing therein, thereby rendering the artificial quail roost inoperative for its intended purpose of furnishing an elevated night roosting platform for woodland quail. Moreover, the artificial quail roost disclosed in Woodland Fish and Wildlife is a solid, free-standing structure that does not require any further bracing with structures like those disclosed in Moran and Yoon. Accordingly, the only reason to add the structures disclosed in Moran and Yoon to the artificial quail roost disclosed in Woodland Fish and Wildlife is to create Applicant's invention, which constitutes an impermissible hindsight reconstruction of Applicant's invention using only teachings supplied in Applicant's own disclosure. Applicant therefore respectfully submits claim 1 as amended and claims 2-4, 8-15, and 17 are patentable over Woodland Fish and Wildlife in view of Moran and Yoon because the modification of Woodland Fish and Wildlife as suggested by the Examiner employs hindsight and produces an inoperative structure.

Claims 16 and 18-21 stand rejected under 35 U.S.C. §103(a) by *Quail On Small Woodlands*, Woodland Fish and Wildlife Project Publication, July 1996 (hereinafter referred to as Woodland Fish and Wildlife) in view of Moran (U.S. Patent No 2,355,008) further in view of Yoon (U.S. Patent No. 4,074,682) as applied to claim 1 still further in view of Copps (U.S. Patent No. 4,982,702). Applicant respectfully submits claims 16 and 18-21 are patentable over the above-recited rejection based upon the preceding arguments with respect to claim 1.

Claim 22 stands rejected under 35 U.S.C. §103(a) by *Quail On Small Woodlands*, Woodland Fish and Wildlife Project Publication, July 1996 (hereinafter referred to as Woodland Fish and Wildlife) in view of Moran (U.S. Patent No 2,355,008) further in view of Yoon (U.S. Patent No. 4,074,682) as applied to claims 1, 19, and 20 still further in view of further in view of McDermott et al. (U.S. Patent No. 2,618,237 – hereinafter referred to as McDermott). Applicant respectfully submits claim 22 is patentable over the above-recited rejection based upon the preceding arguments with respect to claim 1. Moreover, Applicant further respectfully submits that McDermott in fact does not disclose a cantilevered trough. McDermott discloses a rim 16 that is a chamber forming a wall 20. The rim 16 surrounds a tank and defines a return drain cover portion 22 with an opening 23. The rim 16 in no way is cantilevered from the tank. McDermott accordingly does not disclose Applicant's trough assembly cantilevered off the front end of the stand assembly. McDermott certainly provides absolutely no disclosure that insects cannot climb to the water in the tank.

Claim 25 stands rejected under 35 U.S.C. §103(a) by *Quail On Small Woodlands*, Woodland Fish and Wildlife Project Publication, July 1996 (hereinafter referred to as Woodland Fish and Wildlife) in view of Moran (U.S. Patent No 2,355,008) further in view of Yoon (U.S. Patent No. 4,074,682) as applied to claim 1 still further in view of further in view of Rayborn

(U.S. Patent No. 5,924,380). Applicant respectfully submits claim 25 is patentable over the above-recited rejection based upon the preceding arguments with respect to claim 1.

The prior art made of record by the Examiner has been reviewed by Applicant and is deemed not to anticipate nor in any combination render obvious the claimed invention.

In view of the foregoing, Applicant respectfully requests reconsideration of the rejected claims and further earnestly solicits early allowance of the application.

Respectfully submitted,

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DATE: 19 December 2005

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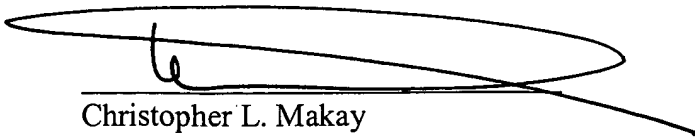
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